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In re Application of:	:	
ANDREWS, Mark, David, et al.	:	DECISION ON PETITION UNDER
U.S. Application No.: 10/506,914	:	37 CFR 1.47(a).
PCT No.: PCT/GB03/00857	:	
Int'l Filing Date: 03 March 2003	:	
Priority Date: 04 March 2002	:	
Attorney's Docket No.: 30698/CDT413	:	
For: PHOSPHORESCENT	:	
COMPOSITIONS AND ORGANIC	:	
LIGHT EMITTING DEVICES	:	
CONTAINING THEM	:	

This decision is issued in response to applicants' petition under 37 CFR 1.47(a) filed 23 May 2005. Applicants have submitted \$130 as the petition fee; however, the correct petition fee is \$200. Deposit Account No. 13-2855 will be charged the remaining \$70.

BACKGROUND

On 03 March 2003, applicants filed international application PCT/GB03/00857 which claimed a priority date of 04 March 2002 and which designated the United States. On 12 September 2003, a copy of the international application was communicated to the United States Patent And Trademark Office (USPTO) by the International Bureau (IB). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 04 September 2004.

On 03 September 2004, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 21 March 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date.

On 23 May 2005, applicants filed a response to the Notification Of Missing Requirements which included payment of the required surcharge, a declaration executed by five

of the six named inventors and the petition under 37 CFR 1.47(a) considered herein. The petition seeks acceptance of the declaration without the signature of the remaining inventor Neil MAXTED, whom applicants assert is unreachable to execute the declaration.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the nonsigning inventor; (3) an oath or declaration executed by the other inventors on behalf of themselves and the nonsigning inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

Applicants here have submitted a portion of the petition fee (Deposit Account No. 13-2855 will be charged the remaining amount) and the petition expressly states the last known address of the nonsigning inventor. Items (1) and (2) are therefore satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Practice (MPEP) states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants have filed complete declarations executed by all the named inventors except Neil MAXTED, with an unsigned signature block for Mr. MAXTED. However, there is a discrepancy between the name of one of the inventors as listed on the declaration and on the international application. Specifically, the inventor listed as Kai LOOK on the international application is identified as Kal LOOK on the declaration. If, as it appears, this disparity represents a typographical error, applicants must confirm that this is the case and confirm the proper spelling of this inventor's first name; if this represents an actual change in this inventor's name, a petition under 37 CFR 1.182 is required (see MPEP section 605.04(b)). Based on the conflict in inventor LOOK's name, item (3) of a grantable petition is not satisfied on the present record. However, if applicants submit materials resolving the conflict in inventor LOOK's name, the present declaration can be accepted as having been signed by the inventors on their own behalf and on behalf of the nonsigning inventor in satisfaction of item (3).

Regarding item (4), the petition asserts that the nonsigning inventor cannot be reached or located after diligent effort. Section 409.03(d) of the MPEP states the following concerning such cases:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47.

Furthermore, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under 37 CFR 1.47. 37 CFR 1.43 may be available under these circumstances. See MPEP § 409.02. Such a petition under 37 CFR 1.47 will be dismissed as inappropriate.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.

Here, applicants have submitted a "Statement Of Facts Under 37 CFR 1.47(a)" executed by Ann Brown (with accompanying exhibits) as evidence that a diligent effort has been made to locate the nonsigning inventor. The evidence provided demonstrates that applicants have made repeated efforts to deliver a copy of the application papers to the nonsigning inventor at his last known address (the evidence appears to confirm that this address is no longer current). However, applicants have not provided any specific firsthand evidence demonstrating that a diligent effort has been made to find a more current address for this inventor (i.e., internet searches, etc.). Applicants must supplement the present submission with proper evidence of the diligent effort made to find a current address for the nonsigning inventor before item (4) can be considered satisfied.

Based on the above, applicants have not, on the present record, satisfied item (4) of a grantable petition.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and must include the firsthand and documentary evidence required to demonstrate that a diligent effort has been made to locate a current address for the nonsigning inventor, as well as a statement (or petition, if appropriate) resolving the disparity in inventor LONG's first name, as discussed above and in the form required by the MPEP.

Failure to file a proper response will result in abandonment of the application.
Extensions of time are available under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT,
Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents
of the letter marked to the attention of the Office of PCT Legal Administration.



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